

# **FTC's Motion for Additional Half-Day of 30(b)(6) Testimony**

## **Attachment 1 To Exhibit A (Corrected)**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

IN RE: VOLKSWAGEN "CLEAN DIESEL"  
MARKETING, SALES PRACTICES AND  
PRODUCT LIABILITY LITIGATION

MDL DOCKET NO. 2672 CRB (JSC)

**PLAINTIFFS' NOTICE OF  
DEPOSITION TO VOLKSWAGEN  
GROUP OF AMERICA, INC.**

This document relates to:

ALL ACTIONS

**TO: COUNSEL FOR DEFENDANTS**

In accordance with FRCP 26, 30(b)(6), and Pretrial Order ("PTO") 20, Plaintiffs Steering Committee and the United States Government Plaintiffs ("Plaintiffs"), by and through their counsel, will take the deposition of Defendant Volkswagen Group of America, Inc. ("Volkswagen USA" or "You") at Constitution Center, 400 7th Street SW, Washington, D.C. 20024, on July 18, 2016, at 9:00 AM. Defendants must designate and produce a representative or representatives, as may be required, to testify regarding the topics set forth on and attached hereto as Exhibit A. Plaintiffs incorporate by reference PTO 20 and the Definitions set forth in the Consumer Plaintiffs' First Set of Document Requests to VW Defendants.

The deposition will be taken before a person authorized by law to administer oaths, pursuant to FRCP 28, and will be stenographically and audiovisually recorded pursuant to FRCP 30(b)(3). The deposition will continue day-to-day until completed.

Volkswagen USA is also directed to produce at the above location the documents set forth on Exhibit B at least five days in advance of the deposition. Plaintiffs incorporate by reference the Definitions set forth in Definitions set forth in the Consumer Plaintiffs' First Set of Document Requests to VW Defendants.

1 Dated: May 27, 2016

Respectfully Submitted,

2 June 3, 2016

Jonathan Cohen (jcohen2@ftc.gov)  
Michelle L. Schaeffer (mschaeffer@ftc.gov)  
Sangjoon "Simon" Han (shan@ftc.gov)  
Megan A. Bartley (mbartley@ftc.gov)  
Federal Trade Commission  
600 Pennsylvania Avenue NW, CC-9528  
Washington, DC 20580  
(202) 326-2551 (Cohen); -3515 (Schaeffer); -2495  
(Han); -3424 (Bartley); -3197 (fax)

*Attorneys for Plaintiff Federal Trade Commission*

**EXHIBIT A**

1  
2 1. The identity of any person or entity that possesses or may possess documents,  
3 ESI, or tangible things that are or that contain or include Potentially Relevant Information  
4 (“PRI”), as Pretrial Order No. 15 defines that term, and what such persons or entities may  
5 possess. For avoidance of doubt, PRI includes information related to the preservation of  
6 information concerning potential or actual claims or defenses.

7 2. Where and how Your employees could have stored PRI.

8 3. The measures to preserve PRI You implemented in response to or in anticipation  
9 of actual or threatened litigation or enforcement activity (“Preservation Measures”) (including  
10 (a) when such measures were implemented and/or modified, (b) the persons involved in  
11 implementing and executing them, (c) why You chose the Preservation Measures You did, (d)  
12 the materials and subject matter they covered, (e) how You attempted to ensure compliance, and  
13 (f) communications between Volkswagen affiliates regarding the Preservation Measures).

14 4. All measures to preserve PRI you considered, but did not take, and the reasons  
15 You did not take such measures.

16 5. The measures You took to identify and notify any nonparties to preserve PRI,  
17 including the identity of such nonparties and the PRI such measures covered.

18 6. Who was responsible for developing, implementing, and monitoring compliance  
19 with Preservation Measures, what their roles were, and who the decision-makers were.

20 7. Details concerning any PRI that may not have been preserved.

21 8. Details concerning any PRI that was or may have been (a) intentionally destroyed  
22 in response to or in anticipation of actual or threatened litigation or enforcement activity, or (b)  
23 otherwise not preserved in accordance with the Preservation Measures.

24 9. The identity of anyone who failed or may have failed to preserve PRI and/or  
25 comply with the Preservation Measures, and details concerning such failure or potential failure.

26 10. Your document retention policies.



1 11. Measures taken to attempt mitigate the loss of PRI.

2 12. Any investigation into the causes and consequences of the destruction of PRI.

3 13. The role of Kirkland & Ellis LLP ("Kirkland"), Herzfeld & Rubin, P.C., Jones  
4 Day affiliates, and Deloitte affiliates in the preservation or attempted preservation of PRI  
5 including, without limitation, the non-privileged components of the August 25, 2015  
6 communication between Kirkland and Stuart Johnson.

7 14. The factual allegations in *Donovan v. Volkswagen Group of America, Inc.*

8 15. Details concerning Your short-term backup systems and Your "SourceOne  
9 Archiving" long-term backup (or any other long-term backup), including, without limitation: (a)  
10 who had access to each backup system, (b) how each system functions, and their relationships to  
11 each other, (c) why Volkswagen USA failed to preserve short-term and/or long-term backup  
12 materials when it issued an initial litigation hold, and (d) and the consequences of this failure.

13 16. Your dissemination of litigation holds to preserve PRI.

14 17. The preservation-related entries on the privilege logs You provided to the FTC on  
15 or about March 12 and March 25, 2016.

16 18. The facts and circumstances surrounding Exhibits A-1 through A-4.

17 **EXHIBIT B**

18 1. Your document retention policies.

19 2. Organizational charts reflecting everyone identified in Exhibit A.

20 3. Documents related to the Preservation Measures described in Exhibit A  
21 (including any investigation into compliance with such measures).

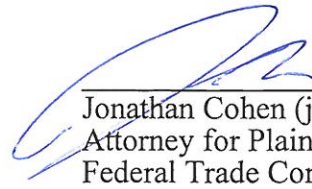
22 4. Documents related to your review of data sources as described in Exhibit A.

23 5. Documents related to preservation of PRI, or the failure to preserve, intentionally  
24 or unintentionally, PRI, but not covered by other requests.

25 6. All Documents You used to prepare Your representative to testify concerning the  
26 topics listed in Exhibit A.  
27

CERTIFICATE OF SERVICE

I, Jonathan Cohen, hereby certify that on June 3, 2016, I caused to be served true copies of the foregoing by electronic means to the parties' identified deposition Point Persons.

  
Jonathan Cohen (jcohen2@ftc.gov)  
Attorney for Plaintiff  
Federal Trade Commission